

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**  
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Before: Martin L. Grossman, Hearing Examiner

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## I. STATEMENT OF THE CASE

Petition No. S-2763, filed on November 5, 2009, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use in the basement of an existing single-family home located at 6510 Allegheny Avenue, Takoma Park, Maryland. The property's legal description is Lot 15, Block 12 of "Pine Crest" Subdivision. It is zoned R-60 and has the Tax Account No. 03170542.

The Hearing was scheduled for February 18, 2010, by notice dated November 16, 2009 (Exhibit 11). Technical Staff at the Maryland-National Capital Parks and Planning Commission (M-NCPPC), in a report issued February 4, 2010, recommended approval of the special exception, with conditions. Exhibit 13.<sup>1</sup>

The Department of Housing and Community Affairs (DHCA) inspected the property on December 28, 2009. Housing Code Inspector Robert Goff reported his findings in a memorandum dated January 26, 2010 (Exhibit 12). The inspector concluded that occupancy must be limited to a family of three or two unrelated persons, in habitable space of 477.6 square feet.

A public hearing was convened on February 18, 2010, as scheduled, and Petitioners appeared *pro se*. Also testifying was Inspector Cynthia Lundy of the Department of Housing and Community Affairs. Petitioners executed an affidavit of posting (Exhibit 14), and supplied a copy of their deed (Exhibit 15). They adopted the findings in the Technical Staff Report (Exhibit 13) and in the Housing Code Inspector's Report (Exhibit 12), as Petitioners' own evidence (Tr. 7-8). They also agreed to meet all the conditions set forth in both reports. Tr. 8-9.

The Hearing Examiner noted that the subject site does not meet all the current R-60 Zone dimensional standards,<sup>2</sup> and he announced that he might take official notice of the Hearing

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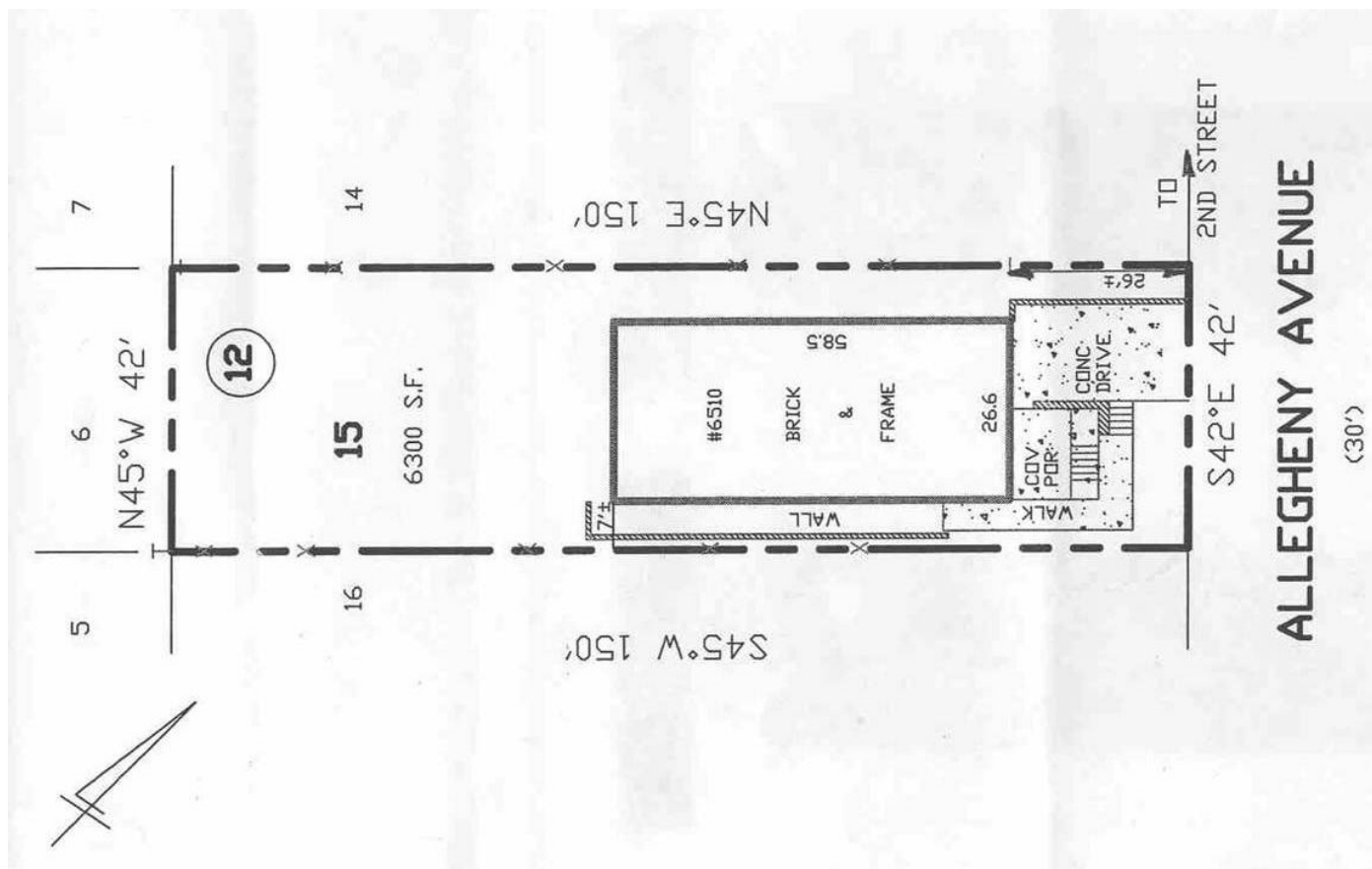
<sup>1</sup> The Technical Staff report is frequently quoted and paraphrased herein.

<sup>2</sup> The subject site is considered conforming under Zoning Ordinance §59-B-6.2 because the structure existed when the site was annexed from Prince Georges County in 1997. Exhibit 13, p. 3.

There is no opposition to this special exception, and the petition meets all of the statutory criteria. The Hearing Examiner therefore recommends that the petition be granted, with conditions.

### A. The Subject Property and the Neighborhood

The subject property is located at 6510 Allegheny Avenue, Takoma Park, Maryland, in the Pine Crest Subdivision, between 2<sup>nd</sup> Avenue and Kansas Lane. The home is in the R-60 Zone, on a 6,300 square-foot lot, as is depicted in the site plan (Exhibit 4):



The home can be seen in the following photograph from Attachment 4 to the Staff report (Exhibit 13):



Figure 1: Site

Technical Staff described the property as follows (Exhibit 13, p. 2):

... This site has a lawn, with shade trees scattered near northwest side of the property. The property is relatively flat with a sidewalk traversing Allegheny Avenue; however, this property sits at a higher elevation than street level. There appears to be adequate lighting. This dwelling has no garage; however, a concrete driveway exists that can accommodate 1 parked vehicle. Vehicle access to this site is via Allegheny Avenue and on-street parking along Allegheny Avenue is restricted to the north side of the roadway. ...

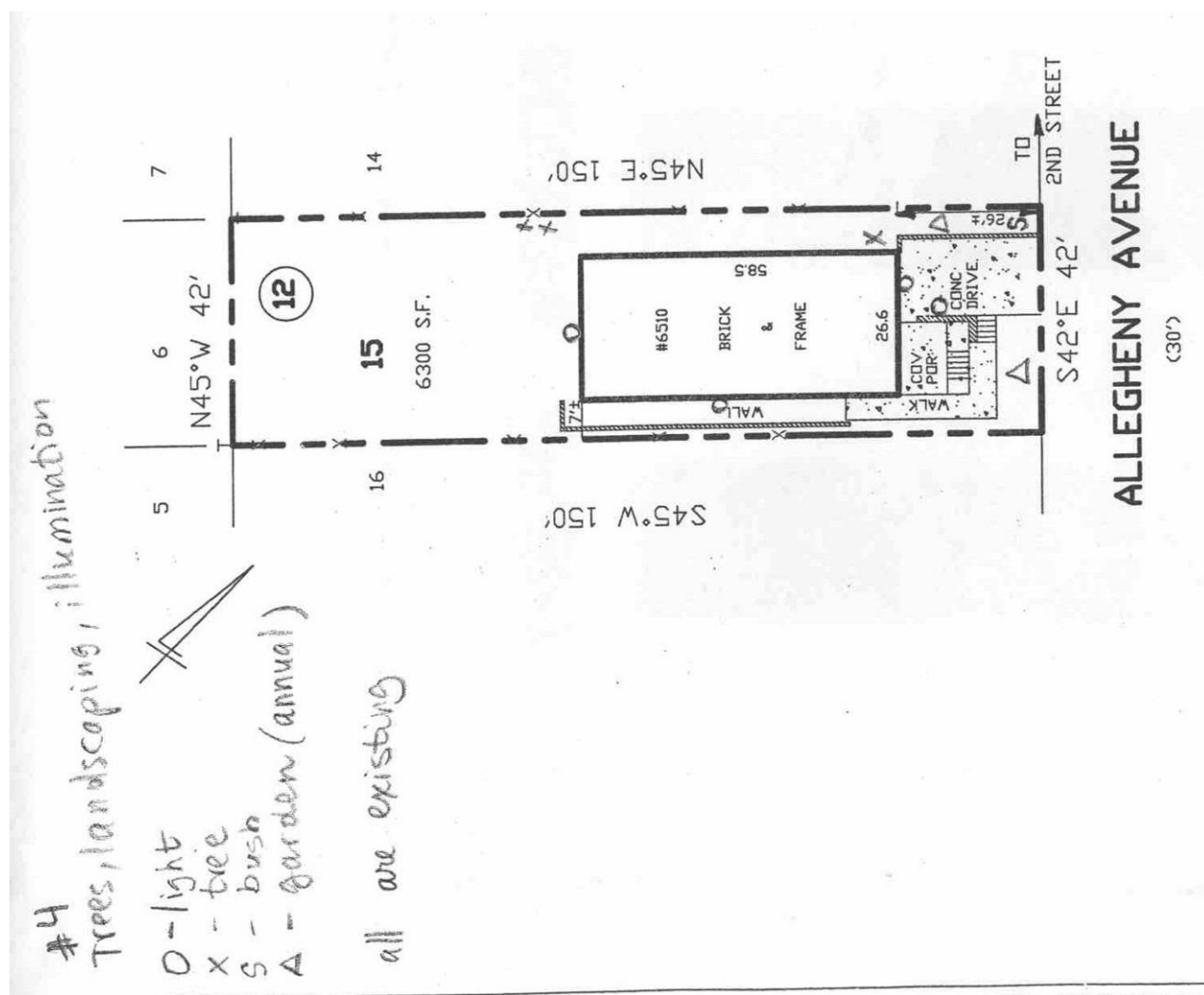
Access to the main structure is by concrete stairs from the driveway. ....

Staff notes that this property was annexed in 1997 from Prince George's County into Montgomery County (Exhibit 13, p. 3).

The property was a recorded lot in 1909, through the recordation of the "Pine Crest" plat, in Prince George's County. The existing house was built

in 1962. Under § 59-B-6.2, any building or structure that was lawful under the Prince George's County Zoning Ordinance in effect on June 30, 1997, and constructed within the Annexation Area under a building permit issued before February 10, 1998, is a conforming building or structure in Montgomery County. The site was rezoned, at the time of annexation, from R-55 (Prince George's County Zone) to R-60, by sectional map amendment G-748.

The location of landscaping and lighting is shown below on the "Lighting and Landscape Plan" (Exhibit 5):

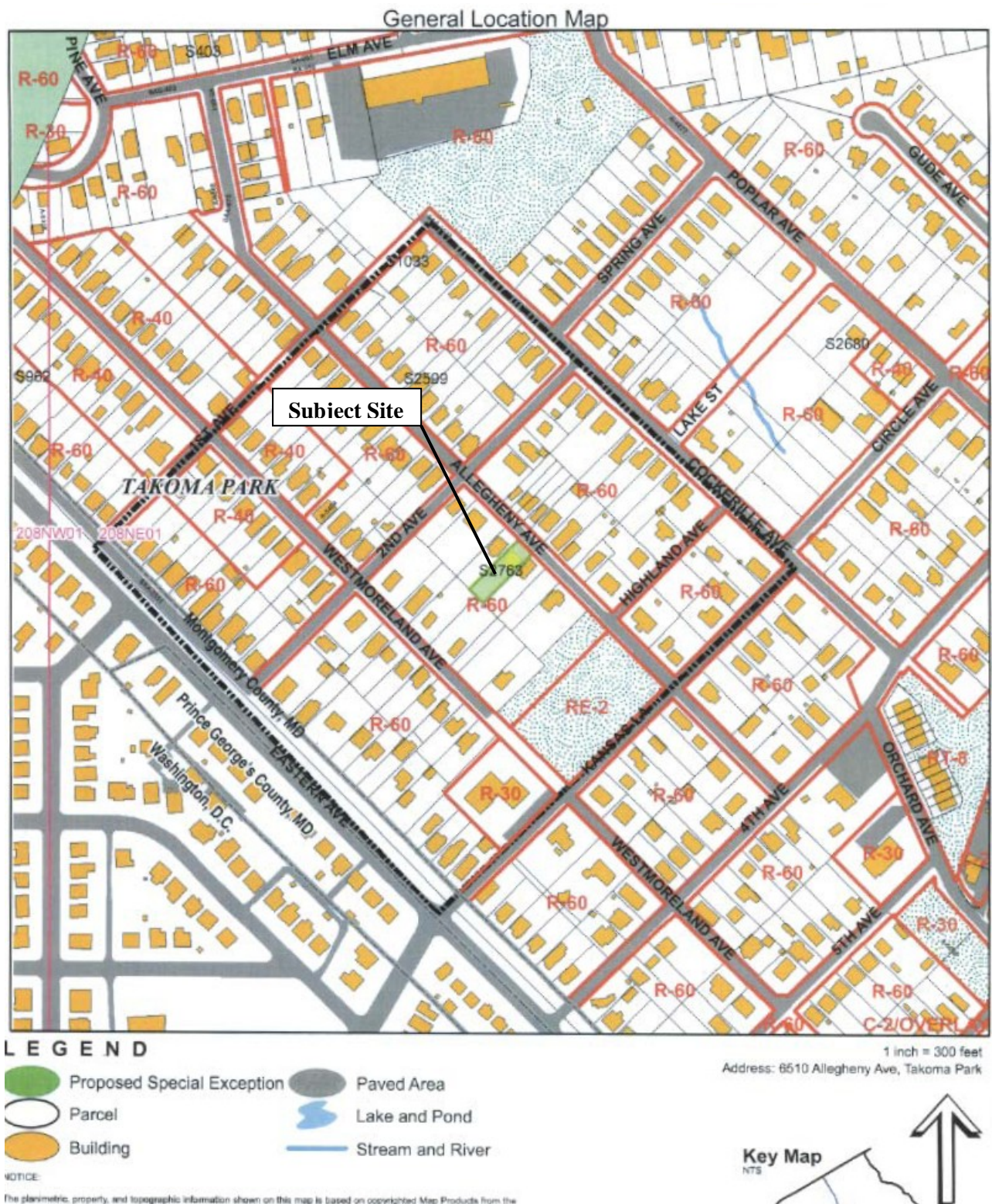


There will be no external changes made to the property if the special exception is granted.

Exhibit 3 and Exhibit 13, p. 11.



Technical Staff defined the general neighborhood as “bounded by Cockerille Avenue to the northeast, First Avenue, to the northwest, Eastern Avenue, to the southwest, and Kansas Lane to the southeast.” The Hearing Examiner accepts this neighborhood definition, and it is shown below on a



General Location Map supplied by Technical Staff as Attachment 2 to its report (Exhibit 13):

According to Technical Staff, the neighborhood consists primarily of residential dwellings zoned R-30, R-40, R-60 and RE-2. A small local park is to the southeast of the site, within the defined neighborhood and is zoned RE-2. Two additional accessory apartments exist in the neighborhood. Exhibit 13, p. 2.

### **B. The Proposed Use**

The Petitioners are seeking a special exception to allow an accessory apartment in the basement of their existing home. A separate entrance to the proposed accessory apartment is located in the front of the residence, on the lower level, as shown in a photograph taken by Petitioners (Exhibit 9(a)).



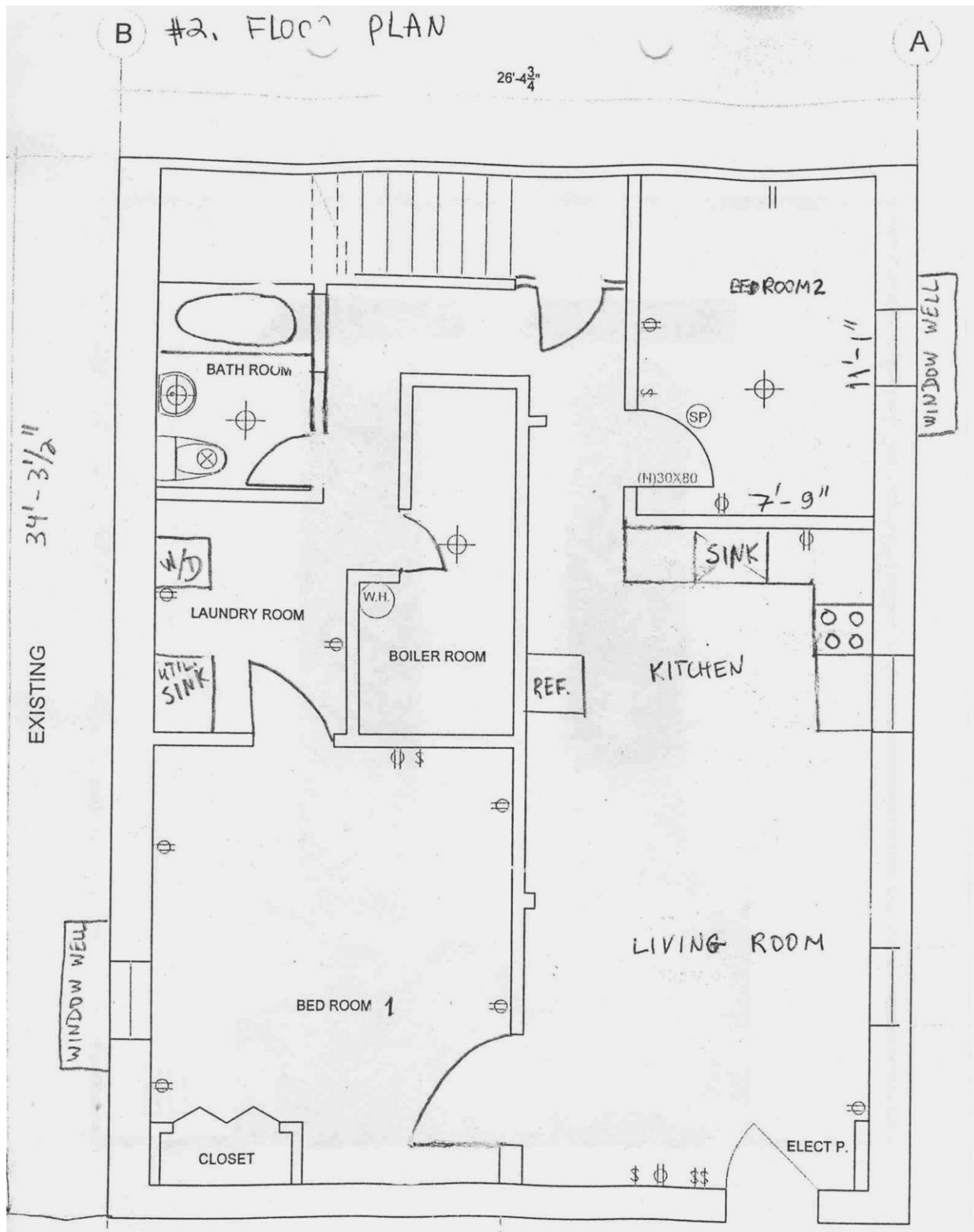
The entrance to the accessory apartment is illuminated with standard residential-type lighting, according to Technical Staff. Exhibit 13, p. 3. Because the entrance appears to be a normal part of the home, the residential appearance is preserved.

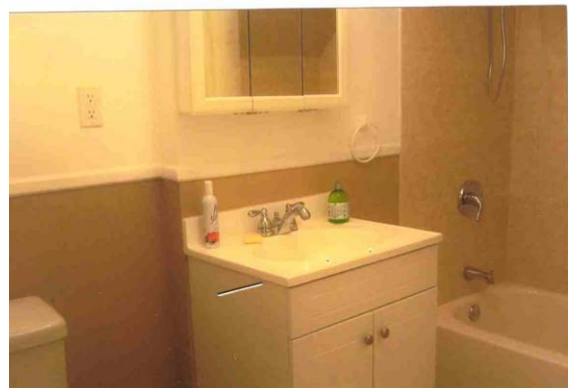
The proposed accessory unit measures approximately 800 square feet, according to Petitioner (Exhibit 3), although the Housing Code Inspector determined that only 477.6 square feet of the space

is habitable (Exhibit 12). The living space includes a living room/kitchen area, two bedrooms, a bathroom, a laundry and a boiler room, as shown on the following Floor Plan ((Exhibit 6) and



interior photos taken by Petitioners (Exhibits 9(b) and (c)):



1st  
bedroom2nd  
bedroomLiving/  
Kitchen

Bathroom

The Department of Housing and Community Affairs (DHCA) inspected the property on December 28, 2009. Housing Code Inspector Robert Goff reported his findings in a memorandum dated January 26, 2010 (Exhibit 12). They are as follows:

1. Install stove/range
2. Install refrigerator

Mr. Goff noted that the total habitable area of the accessory apartment is approximately 477.6 square feet. Based on that fact, he concluded that it may be occupied by no more than 2 unrelated persons or a family not to exceed 3 persons. He also observed that there is a one-car driveway, measuring 19 X 21, and there is off-street parking.

Petitioners testified that they would take the steps required to make the accessory apartment habitable (Tr. 8-9).

Technical Staff discussed the transportation issues at page 3 of their report (Exhibit 13), stating:

Transportation staff finds that the proposed application satisfies the Local Area Transportation Review and the Policy Area Mobility Review tests and would not have any adverse effects on the roadway or nearby pedestrian facilities. Staff estimates that one additional vehicle trip would be generated in both the A.M. and P.M. peak-hours..

Transportation Staff also noted that there are sidewalks along both sides of Allegheny Avenue and that pedestrian accessibility and safety in the area will not be affected by the special exception. Exhibit 13, Attachment 7, p. 2. The sidewalks and street adjacent to the subject site



Figure 2: Street View (looking NW)



Figure 3: Street View (Looking SE)

can be seen on the following photos from Attachment 4 to the Staff report:

There is only one off-street parking space available on the site, and it is in Petitioners' driveway. Petitioners indicate in the statement accompanying their petition (Exhibit 3) that they own only one car; that they do not plan on getting a second one; that "3-8 parking spots are routinely available" on their block; and that more are available nearby. Mr. Love also testified at the hearing that there is "usually plenty of space." Tr. 10. Cynthia Lundy, the Housing Code Inspector who appeared at the hearing, testified that there should be room for one tenant parking on

Allegheny Avenue without creating an adverse parking situation in the neighborhood, but the streets are narrow and “you certainly have to get home to get a space.” Tr. 13-14. Technical Staff reported that “on-street parking is available to accommodate the accessory apartment, even though there is a parking restriction along the south side of Allegheny Avenue.” Exhibit 13, p. 13.

Based on this un rebutted evidence, the Hearing Examiner finds that there is adequate on-street parking to accommodate at least a single vehicle owned by a tenant. Nevertheless, the Hearing Examiner recommends the following condition to avoid creation of a parking problem in the neighborhood: “Petitioners must restrict the accessory apartment tenant to keeping no more than one vehicle in the general neighborhood, given the availability of only one off-street parking space at the site.”

With regard to lighting, Technical Staff reports that the entrance into the accessory apartment is illuminated with typical residential outdoor lighting. After review of the proposed lighting plan, staff found that no direct light would intrude into any adjacent residential property. Exhibit 13, p. 9.

Finally, Technical Staff indicated that there are no environmental issues associated with the proposed use. Exhibit 13, p. 4.

Based on this record, the Hearing Examiner finds that the proposed special exception will not cause non-inherent adverse effects on the neighborhood warranting denial of the petition.

### **C. Neighborhood Response**

As mentioned at the beginning of this report, there has been no response from the community, either positive or negative to the subject petition. There is no opposition in the case.

### **D. The Master Plan**

The property is located within the area covered by the *Takoma Park Master Plan*, approved and adopted in December 2000. The Plan does not explicitly address the question of accessory

apartments, but it does emphasize revitalizing housing and accepting a diversity of housing types in the community. Master Plan, pp. 28-29. The Plan also supports the R-60 zoning, which permits accessory apartments as special exceptions. Plan Appendix B, at p.7 (Map 41).

Because Petitioners plan no external structural modifications to the subject property, Technical Staff concluded, and the Hearing Examiner agrees, that the special exception is consistent with the Takoma Park Master Plan's objective of protecting the residential character of the area. Exhibit 13, p. 3.

Thus, it is fair to say that the planned use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the *Takoma Park Master Plan*.

### **III. SUMMARY OF HEARING**

At the hearing, testimony was heard from Petitioners John and Inessa Love and from Housing Code Inspector Cynthia Lundy.

#### John and Inessa Love:

Petitioners executed an affidavit of posting (Exhibit 14), and supplied a copy of their deed (Exhibit 15). They adopted the findings in the Technical Staff Report (Exhibit 13) and in the Housing Code Inspector's Report (Exhibit 12), as Petitioners' own evidence. Tr. 7-8. They also agreed to meet all the conditions set forth in both reports. Tr. 8-9.

Petitioners identified their site, landscape, lighting and floor plans, as well as the photos in Exhibits 9(a), (b) and (c). Tr. 14 - 16. Mr. Love also testified at the hearing that there are usually plenty of parking spaces available on his street. Tr. 10.

#### Housing Code Inspector Cynthia Lundy<sup>3</sup>:

Housing Code Inspector, Cynthia Lundy, testified based on Inspector Robert Goff's report of his inspection of the premises on December 28, 2009 (Exhibit 12). Ms. Lundy indicated that she is

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<sup>3</sup> Inspector Goff, who performed the actual inspection and wrote the DHCA report, was unavailable.



familiar with Takoma Park, and she testified that there should be room for one tenant parking on Allegheny Avenue without creating an adverse parking situation in the neighborhood, but the streets are narrow and “you certainly have to get home to get a space.” She saw no reason to deny the special exception. Tr. 13-14.

#### **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioners have the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioners will have satisfied all the requirements to obtain the special exception, if they comply with the recommended conditions (Exhibits 13).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioners comply with the conditions set forth in Part V, below.

##### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale

of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 13, p. 4):

- (1) the existence of the apartment as a separate entity from the main living unit but sharing a party wall with the main unit;
- (2) the provision within the apartment of the necessary facilities and spaces and floor area to qualify as a habitable space under the Building Code;
- (3) provision of a separate entrance and walkway and sufficient lighting;
- (4) provision of sufficient parking;
- (5) the existence of an additional household on the site; and
- (6) additional activity from that household, including potential for additional noise from that additional household.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that

would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found “that the size, scale, and scope of the requested use are minimal, and that any noise, traffic, and disruption, or any other environmental impacts associated with the use would be slight. There are no unusual characteristics of the site.” Exhibit 13, p. 4. Thus Staff concluded that there are no non-inherent adverse effects arising from the accessory apartment sufficient to form a basis for denial.

The Hearing Examiner finds that there is one non-inherent site characteristic – the fact that there is only one off-street parking space on the site. However, as discussed in Part II. B. of this report, there is parking available on the street, and both Technical Staff and DHCA found that this site characteristic will not result in adverse effects on the general neighborhood. Thus, while this issue warrants a condition limiting to one, the number of vehicles the tenant may park in the neighborhood, the Hearing Examiner finds that it does not justify denying the petition.

In sum, considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes, as did the Technical Staff, that there are no non-inherent adverse effects from the proposed use warranting denial of this petition.

### **B. General Conditions**

The general standards for a special exception are found in Zoning Code §59-G-1.21(a). The Technical Staff report, the Housing Code Inspector’s report, the exhibits in this case and the testimony at the hearing provide ample evidence that the general standards would be satisfied in this case.

#### **Sec. 59-G-1.21. General conditions.**

**§5-G-1.21(a)** *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be,*

*finds from a preponderance of the evidence of record that the proposed use:*

*(1) Is a permissible special exception in the zone.*

Conclusion: An accessory apartment is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31.

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

*(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the *Takoma Park Master Plan*, approved and adopted in December 2000. The Plan does not explicitly address the question of accessory apartments, but it does emphasize revitalizing housing and accepting a diversity of housing types in the community. Master Plan, pp. 28-29. The Plan also supports the R-60 zoning, which permits accessory apartments as special exceptions. Plan Appendix B, at p.7 (Map 41). The Technical Staff concluded that the proposed accessory apartment would be consistent with the Master Plan. Exhibit 13, p. 3.

Moreover, because Petitioners plan no external structural modifications to the

subject property, the requested special exception will maintain the residential character of the area. Thus, it is fair to say that the planned use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the *Takoma Park Master Plan*.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The accessory apartment will be located in an existing dwelling and will not require any external changes. It therefore will maintain its residential character. There will be sufficient parking, considering the driveway space and the availability of on-street parking, and traffic conditions will not be affected adversely, according to Transportation Planning Staff. There are only two other similar uses in the neighborhood (accessory apartments), and the addition of this use will not affect the area adversely. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood. Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 13, p. 7), and the evidence supports this conclusion.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in answer to the previous section of this report, the special



exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that the property “is illuminated with typical residential outdoor lighting. After review of the proposed lighting plan, staff finds that no direct light would intrude into any adjacent residential property.” Exhibit 13, p. 9. Since the use will be indoors and residential, it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. The Hearing Examiner so finds.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: As discussed above, the Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 13, p. 7), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (PAMR). As indicated in Part II. B. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. Exhibit 13, Attachment 7. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. Since the proposed use is estimated to generate only one additional peak-hour

trip, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially the Technical Staff's conclusion that the special exception "will not reduce the safety of vehicular or pedestrian traffic," the Hearing Examiner so finds. Exhibit 13, p. 7.

### **C. Specific Standards**

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 13), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

#### ***Sec. 59-G-2.00. Accessory apartment.***

*A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:*

##### ***(a) Dwelling unit requirements:***

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*

- (i) *The lot is 2 acres or more in size; and*
- (ii) *The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The apartment is located in the basement of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

- (3) *An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in an existing dwelling.

- (4) *The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: The house was built in 1962. Exhibit 3. It therefore meets the “5 year old” requirement.

- (5) *The accessory apartment must not be located on a lot:*

- (i) *That is occupied by a family of unrelated persons; or*
- (ii) *Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) *That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The proposed use does not violate any of the provisions of this subsection.

- (6) *Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: Access to the accessory apartment is through an existing front entrance to the home, on the lower level. There will thus be no change to the residential appearance of the dwelling.

- (7) *All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: Petitioners are not proposing any new construction or modifications to the exterior of the dwelling.

*(8) The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

*(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

Conclusion: The accessory apartment is clearly subordinate to the main dwelling and under 1,200 square feet, as it occupies approximately 835 square feet of space (477.6 square feet of which is habitable space) in Petitioners' existing 2,413 square-foot home. Exhibit 13, p. 11.

**59-G § 2.00(b) Ownership Requirements**

*(1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioners will live in one part of the dwelling.

*(2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to the deed (Exhibit 15), Petitioners purchased the home in 2008. The one-year rule has therefore been satisfied.

*(3) Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioners will receive compensation for only one dwelling unit as a condition of



the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: The Petitioners are the owners of the property.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

### **59-G § 2.00(c) Land Use Requirements**

- (1) *The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: The subject lot is approximately 6,300 square feet in size, and therefore satisfies this requirement. Although the site does not meet all the current R-60 development standards, it is considered a conforming property because it was annexed from Prince Georges County in 1997. As explained by Technical Staff (Exhibit 13, p. 3):

The property was a recorded lot in 1909, through the recordation of the "Pine Crest" plat, in Prince George's County. The existing house was built in 1962. Under § 59-B-6.2, any building or structure that was lawful under the Prince George's County Zoning Ordinance in effect on June 30, 1997, and constructed within the Annexation Area under a building permit issued before February 10, 1998, is a conforming building or structure in Montgomery County. The site was rezoned, at the time of annexation, from R-55 (Prince George's County Zone) to R-60, by sectional map amendment G-748.

The following chart from the Technical Staff Report (Exhibit 13, pp. 7-8) specifies the R-60 development standards and those actually found on the site:

**Table 1: Applicable Development Standards – R-60 Zone**

Development Standards	Requirement R-60	Provided
Minimum Tract Area (§59-G1.321(a))	n/a	n/a <sup>4</sup>
Lot Area (59-G1.322(a))	6,000 sf	±6,300 sf
Lot Width (§59-G1.322(b)) @ Front Building Line @ Street	60' 25 ft	±42 ±42
Yard (Setback) Requirements (§59-G1.323): (a) From Street: (b) From Lot Line: (c) Rear Yard:	25' 8' (one side) 18' (both sides) 20'	±25' ±7' ±16' ±65
Building Height (maximum) (§59-G1.327)	35' (regardless of roof type)	±25'
Coverage (maximum net lot area) (§59-G1.328)	35%	24.7%

As a conforming building under the annexation agreement, the proposed use satisfies the applicable development standards. Because it is conforming, and not merely lawfully non-conforming, the Hearing Examiner did not find it necessary to take official notice of precedents discussing non-conforming structures.

- (2) *An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use (see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).*

**Conclusion:** As previously stated in this report, the Hearing Examiner concludes that the proposed special exception, combined with the existing two accessory apartments in the neighborhood, will not create an excessive concentration of similar uses.

- (3) *Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:*
- (i) *More spaces are required to supplement on-street parking; or*
  - (ii) *Adequate on-street parking permits fewer off-street spaces.*
- Off-street parking spaces may be in a driveway but otherwise must not*

<sup>4</sup> There was a typo in the Staff report, which gave an erroneous figure in this box. After checking with Staff, the Hearing Examiner has corrected this error.

*be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: As discussed in Part II.B. of this report, there is only one off-street parking space in Petitioners' driveway, and that will be occupied by Petitioners' single vehicle; however, the evidence in this case supports the finding that there is adequate on-street parking to accommodate at least a single vehicle owned by a tenant. The Hearing Examiner recommends the following condition to avoid creation of a parking problem in the neighborhood: "Petitioners must restrict the accessory apartment tenant to keeping no more than one vehicle in the general neighborhood, given the availability of only one off-street parking space at the site."

#### **D. Additional Applicable Standards**

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. B. of this Report, the Housing Code Inspector's report (Exhibit 12) notes certain issues, and recommends that occupation of the accessory apartment be limited to no more than three family members or two unrelated persons. As mentioned above, Petitioners have agreed to meet all conditions, and will make the repairs required by the Housing Code Inspector.

#### **V. RECOMMENDATION**

Based on the foregoing analysis, I recommend that Petition No. S-2763, which seeks a special exception for an accessory apartment to be located at 6510 Allegheny Avenue, Takoma Park, Maryland, be GRANTED, with the following conditions:

1. The Petitioners are bound by their testimony, representations and exhibits of record;
2. The Petitioners must make the repairs needed to comply with the conditions set forth in the Memorandum of Robert Goff, Housing Code Inspector, Division of Housing and Code

Enforcement (Exhibit 12):

- a. Install stove/range
  - b. Install refrigerator
3. Based on habitable space in the apartment (477.6 square feet), no more than three family members or two unrelated persons may reside in the accessory apartment;
  4. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
  5. Petitioners must not receive compensation for the occupancy of more than one dwelling unit;
  6. Petitioners must restrict the accessory apartment tenant to keeping no more than one vehicle in the general neighborhood, given the availability of only one off-street parking space at the site; and
  7. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: March 3, 2010

Respectfully submitted,

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Martin L. Grossman  
Hearing Examiner